IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.721 OF 2003
IN
SUMMARY SUIT NO.2005 OF 2003

The City Union Bank Limited Plaintiff

versus

M/s.Suraj Plastowelds & others Defendants

Mr.Ravi Ramnath i/by Ramnathsekhar & Co. for plaintiff.

Mr.Rajesh Kachare i/by Shriram S.Redu for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th July 2005

PC :

1. Heard Mr.Ramnath Ravi for plaintiff and Mr.Kachare for defendants.

2. On an application made by defendant no.2 in his capacity as a Sole Proprietor of defendant no.2, the plaintiff bank sanctioned certain facilities on the terms and conditions of the sanction letter dated 14th June 2000. The facilities were for a period of one year. The facilities were sanctioned on the condition that

a Demand Promissory Note is executed by the defendants. One of the terms and conditions stipulated was execution of letter of guarantee by defendants 3 and 4. It is the case of the plaintiff bank that amount was disbursed and the facility was availed of. However, neither the amount was paid nor the demand notice addressed on 26th October 2002 complied with. The plaintiff duly forwarded statement of account maintained by them in their books in ordinary and regular course of business. since the amounts which are due and payable, according to the plaintiff bank, on a written contract as evidenced by letter of sanction and also on the promissory note have remained unpaid, the present summary suit is filed.

3. Affidavit in reply is filed by defendants. As far as defendants 1 and 2 are concerned, Mr.Kachare contends that the promissory note has not been executed inasmuch as signatures on blank documents were obtained by the officials of the bank and, therefore, the defendants are not liable to pay. It is also contended that if the facilities are for a period of one year, then the account forwarded from 14th June 2000 to 20th May 2003 cannot be made basis of the recovery,

inasmuch as entries therein pertain to the year 2002-2003 which is much beyond the period sanctioned. In any event, once the facilities have been extended and for such extension neither any letter nor any acknowledgement is obtained from defendants 3 and 4, then they stand discharged as guarantors. Therefore, the execution of the promissory note being disputed by the principal borrower and the guarantors standing discharged as above, according to Mr.Kachare, this is a fit case for grant of unconditional leave.

4. With the assistance of learned counsel appearing for both sides I have perused the plaint and the annexures thereto. It is pertinent to note that Mr.Kachare does not dispute that defendant no.2 applied for facilities vide his application at Exhibit-A. He does not dispute that the letter sanctioning the facilities has been duly received incorporating the terms and conditions stipulated therein. All that he disputes is that although the contract stipulates execution of a promissory note by the principal borrower as well as the guarantors, such promissory note has not been executed. In my view, it was for nothing that the bank was

insisting upon a promissory note. If the application for sanction is admitted and if grant and disbursement of the amount is admitted, then the promissory note is valid. One of the terms on which amount is sanctioned and disbursed is execution of Demand Promissory Note. It is not the case of defendants 1 and 2 that a particular officer of the bank has pressurised them or coerced them and that is how the blank documents have been signed. That is not the reply or the stand taken when the demand notice was addressed. It is only in affidavit in reply that such a contention is raised. Therefore, at least insofar as principal borrowers are concerned, I do not see any defence, leave alone a substantial one. However, interest of justice would be served if the defendant nos.1 and 2 are granted conditional leave to defend, on deposit of a sum of Rs.2.75 lakh (Rs.Two lakh seventy five thousand only) in this Court within a period of 16 weeks from today. As far as defendants 3 and 4 are concerned, in my view, the terms and conditions are clear. Although their names are mentioned in the application and they have signed the promissory note, it appears that have not executed any letter of guarantee nor any letter or deed is placed on record. That apart, even if

they are liable, their liability prima facie is up to 15th June 2002. Therefore, there is some substance in their contention that if the facilities were continued, that would amount to giving concessions contrary to any agreement with them. This alters the original terms. Therefore, in my view, insofar as defendants 3 and 4 are concerned, they being sued as guarantors, they are entitled to unconditional leave to defend. Summons for Judgement disposed off in the above terms.

5. On the amount being deposited, the plaintiff bank would be entitled to apply for withdrawal of the same and such application would be dealt with appropriately.

6. Needless to state that in default, further consequences in law will follow. On deposit of the amount, the suit shall transferred insofar as principal borrowers are concerned, to the list of commercial causes with usual directions as to written statement, inspection and discovery. Suit stand transferred to the list of commercial causes as far as defendants 3 and 4 are concerned with usual directions.

(S.C.DHARMADHIKARI, J.)